Appeal dismissed.

Solicitors: *Lim Cheng Ean & Co.; Maxwell, Kenion, Cowdy & Jones.*

TAN TECK YAM v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) August 29, 1967]

[Selangor — Criminal Case No. 61 of 1967]

Criminal Law — Obstructing public servant in discharge of his public function — Refusing to leave public servant's office when asked to do so — Whether voluntary obstruction.

Penal Code, ss. 186 and 39 — "Voluntarily" obstructs a public servant — Meaning of.

The appellant was charged with obstructing the chief assistant district officer, Kuala Lumpur, in the discharge of his public function, an offence punishable under section 186 of the Penal Code. He was unrepresented in the court below. He claimed trial and was duly convicted and sentenced to three months' imprisonment.

The appellant had for the last 3½ years been frequenting the district office in order to apply for a piece of land on Mountbatten Road. It was not disputed that he pestered the district officer with his claim about four times a week during that period. The appellant after being in the chief assistant district officer's office for half-an-hour, that officer requested the appellant to leave his room as there were others outside his office who were waiting to see him. He told the appellant that he would have to call the police if he did not leave. The appellant dared him to do so and stood up and banged his file on the table. He then raised his fists and challenged the officer to a fight. He said that he could even call in his wife, and just then the wife rushed in with her hands ready for a fight. Both of them were threatening the said officer and he realised then that he had to call in the police. Subsequently the police arrived and the appellant was apprehended.

Held: (1) for an offence under section 186 of the Penal Code the prosecution has to prove the following: (a) that there was obstructing of a public servant, (b) that the public servant was at that time discharging his public function, and (c) that the person obstructing did so voluntarily. It is clear, therefore, that to obstruct under section 186 is to do an act which makes it more difficult for a public servant to carry out his duties;

(2) the definition of the term "voluntarily" bears resemblance to the definition of "wilfully" current in the English law. "Wilful" in this context means not only "intentional" but also connotes something which is done without lawful excuse.

Cases referred to:—

(1) *Hinchliffe* v. *Sheldon* [1955] 3 All E.R. 406, applied.

(2) *Rice* v. *Connolly* [1966] 2 All E.R. 649 at p. 651, applied.

MAGISTRATE'S CRIMINAL APPEAL.

T. Selvarasan for the appellant.

Zaiton binte Osman (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah J. (delivering oral judgment): The appellant was charged with obstructing the chief assistant district officer, Kuala Lumpur, in the discharge of his public function, an offence punishable under section 186 of the Penal Code. He was unrepresented in the court below. He claimed trial and was duly convicted and sentenced to three months' imprisonment.

The facts are sufficiently stated in the learned magistrate's judgment. The appellant had for the last 3½ years been frequenting the district office in order to apply for a piece of land on Mountbatten Road. It is not disputed that he pestered the district officer with his claim about four times a week during that period. I now quote a passage from the learned magistrate's judgment:—

> "After being in the chief assistant district officer's office for half-an-hour, that officer requested the appellant to leave his room as there were others outside his office who were waiting to see him. He told the appellant that he would have to call the police if he did not leave. The appellant dared him to do so and stood up and banged his file on the table. He then raised his fists and challenged the officer to a fight. He said that he could even call in his wife, and just then the wife rushed in with her hands ready for a fight. Both of them were threatening the said officer and he realised then that he had to call in the police".

Subsequently the police arrived and the appellant was apprehended. From the record, there is no doubt that the learned magistrate disbelieved the appellant's version.

For an offence under section 186 of the Penal Code the prosecution has to prove the following: (1) that there was obstructing of a public servant, (2) that the public servant was at that time discharging his public function, and (3) that the person obstructing did so voluntarily. It is in my view clear that to obstruct under section 186 of the Penal Code is to do an act which makes it more difficult for a public servant to carry out his duties. I take that definition of "obstruction" from the case of *Hinchliffe* v. *Sheldon*.[1] It is therefore quite clear that the appellant was making it more difficult for the chief assistant district officer to discharge his public function and that the said officer was at that time involved in discharging his public functions. The only remaining element of the alleged offence is whether the obstruction was voluntary. That brings me to section 39 of the Penal Code which defines "voluntarily" as,

> "A person is said to cause an effect 'voluntarily' when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it".

The definition of the term "voluntarily" bears resemblance to the definition of "wilfully" current in the English law. (See *Raitanlal*, The Law of Crime, 21st Ed. p. 82). In *Rice* v. *Connolly* [2] Lord Parker, C.J. said,

> " 'Wilful' in this context in my judgment means not

only 'intentional' but also connotes something which is done without lawful excuse".

It is clear in the present case that the appellant had a licence to be in the chief assistant district officer's office. When he was told to leave, the licence expired and thenceforth he became a trespasser and consequently he had no lawful excuse for his presence in that office. In my judgment the learned magistrate has given full effect to the law under section 186 of the Penal Code. The appeal against conviction is dismissed.

I now come to sentence. It has been said over and over again that an appellate court is reluctant to interfere in matters of sentence unless it can be shown to be manifestly excessive. Each case must be decided on its merits. For my part, I am of the opinion that the circumstances of this case do not warrant a severe sentence of three months. No harm has been done to anybody except the appellant himself. It is not improper to say that the appellant has allowed passion to take the place of reason, and I think that the sentence imposed by the learned magistrate is unduly excessive. In the circumstances I would allow the appeal against sentence, set aside the sentence of three months' imprisonment, and substitute an order of binding over under section 294 of the Criminal Procedure Code to keep the peace for a period of one year in the sum of $500.

Appeal against conviction dismissed.
Appeal against sentence allowed.
Sentence of imprisonment set aside, order of binding over substituted.

Solicitors: *T. Selvarasan & Co.*

NASIB KAUR & ANOR. v. CHEAH KIT & ANOR.

[O.C.J. (MacIntyre J.) September 14, 1967]
[Ipoh — Civil Suit No. 29 of 1965]

Damages — Negligent driving — Fatal injuries — Damages for loss of expectation of life — Contributory negligence — Doctrine of res ipsa loquitur — Interest on damages.

The plaintiffs claimed damages against the defendants arising out of the death of the first plaintiff's husband from fatal injuries sustained in a motor car accident. To prove negligence, the plaintiffs relied on circumstantial evidence, and upon the doctrine of *res ipsa loquitur*. The second defendant who was the only eye witness available gave two different versions: one at the inquest and the other at the trial of the accident. The deceased was 32 years of age at the time of his death and was employed as a watchman by the National Electricity Board at a salary of $140 per mensem. He was given free living quarters and free electricity and water.

Held: (1) in view of the contradictory evidence given by the second defendant at the trial and at the inquest, the court was unable to come to any conclusion as to whether the deceased contributed to the accident or not;

(2) the defendants were liable in damages which would be assessed at $320 as special damages and general damages at $15,000.

The plaintiffs also claimed for interest at 6% per annum from date of the death of the deceased to date of the payment of decretal amount.

Held: this was not a proper case in which the court should exercise its discretion in favour of awarding interest as claimed.

Cases referred to:—

(1) *G. Sivarayan* v. *Swee Lam Estate (M) Ltd.* [1966] 1 M.L.J. xvii & xxxi.

(2) *Carr & Anor.* v. *Boxall* [1960] 1 All E.R. 495.

CIVIL SUIT.

Atma Singh Gill for the plaintiffs.

N. H. Chan for the defendants.

Cur. Adv. Vult.

MacIntyre J.: This is a claim under sections 7 and 8 of the Civil Law Ordinance, 1956, brought by the 1st plaintiff as the widow and administratrix of the estate of Kerpal Singh, deceased, and by the 2nd plaintiff as co-administrator, for damages against the 1st and 2nd defendants arising out of the death of the said Kerpal Singh from fatal injuries sustained in a motor car accident at Ipoh at about 8.50 p.m. on the 6th day of December 1963. The accident is alleged to be caused by the negligent driving of motor car AB 910 by the 2nd defendant as the servant or agent of the 1st defendant, the registered owner thereof.

To prove negligence, the plaintiffs rely on circumstantial evidence, and upon the doctrine of *res ipsa loquitur*.

It is unfortunate that the only eye witness available to give evidence is the 2nd defendant (hereinafter referred to as 'the defendant'). Another witness who was in the car with him at the time of the accident is said to have gone away to Sarawak without leaving a forwarding address.

The accident took place at Lahat Road, Ipoh. Prior to the accident the defendant was driving the car towards Ipoh, and when about 40 feet from the junction with Jalan Connolly on his left, he saw the deceased on a bicycle about 10 feet away from the stop/look/go sign at Jalan Connolly riding fast towards the junction. According to the defendant it did not occur to him that the deceased had no intention of stopping at the sign-post and had therefore not reduced his speed which was then about 25 m.p.h. The deceased then rode into Jalan Lahat and turned to his left and instead of keeping to the left of the road, rode diagonally across towards the centre resulting in a collision with his car.

In cross-examination the defendant admitted